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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,982	02/09/2004	Kurt J. Fredrickson	KF-2004-01	9597

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EXAMINER

GABLER, PHILIP FRANCIS

ART UNIT PAPER NUMBER

3637

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/774,982	Applicant(s) FREDRICKSON, KURT J.	
	Examiner Philip Gabler	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see remarks, filed 18 July 2006, with respect to the rejections of claims 1-25 under 35 USC 102, 35 USC 103, and 35 USC 112 have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, new grounds of rejection have been made and are presented in this non-final Office Action.

Election/Restrictions

2. Applicant's election without traverse of the angularly adjustable post mount configuration of Figures 1-5 and 7 in the reply filed on 18 July 2006 is acknowledged.

Claim Objections

3. Claim 2 is objected to because of the following informalities: it appears to be missing the word "the" before the word "curved" on the second line of the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4 and 14-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 4 recites the limitation "the upper... bearing [surface]" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.
7. Claim 14 recites the limitation "the elongate aperture" in line 21 of the claim. It is unclear if this is a reference to the "aperture" of the lower bearing or the "elongate slot" of the post base. The claim is accordingly deemed indefinite.
8. Claims 15-18 are deemed indefinite as being dependent on an indefinite claim.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-5, 7-10, 19, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by West (US Patent Number 5404682).
11. Regarding claims 1, 4, 7, 19, and 24, West (Figures 1, 7, and 7A) discloses a mounting apparatus for a post, comprising: a stationary portion (23, 29, etc.) having an

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attachment means or rod (29) secured to a substructure (the ground) and extending from the substructure in a direction defining a first axis; an adjustable post mounting means or base (35) positioned above and resting on the stationary portion comprising a post mounting surface (surface of 35) to which a tubular post may be attached and a semispherically curved downwardly facing bottom bearing surface (the undersurface of 35, 51), the curved downwardly facing bottom surface having a slotted aperture (36) through which the attachment rod extends; a spacer or lower bearing (32) positioned beneath the post base and between the post base and the stationary portion, the lower bearing comprising a semispherical curved upwardly facing surface substantially corresponding in curvature to the curved downwardly facing bottom surface of the post base and in slidable engagement therewith forming a semispherical joint capable of enabling angular adjustment of the post base with respect to the first axis to offset a vertical misalignment in the stationary portion within a predetermined range, and providing a central aperture (33) through which the attachment rod extends; and means or fastener (37) to releasably secure the post base to the stationary portion and lock the post mount into position; wherein the post base may be rotated about the first axis and angularly offset therefrom, to enable a mounted post (22) to be angularly aligned and secured.

12. Regarding claims 2 and 3, West further discloses the curved downwardly facing bottom surface is concave and the curved upwardly facing surface is convex, and curved surfaces comprise substantially equivalent radiuses of curvature.

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13. Regarding claim 5, West further discloses the post base comprises an exterior sidewall dimensioned to engage an inside wall of the post to be mounted (see figures).

14. Regarding claim 8, West further discloses the means to releasably secure the post base to the stationary portion comprises a threading engagement of the attachment rod in the substructure (see figures).

15. Regarding claims 9 and 10, West further discloses a concrete anchor (180) in which an attachment rod is embedded.

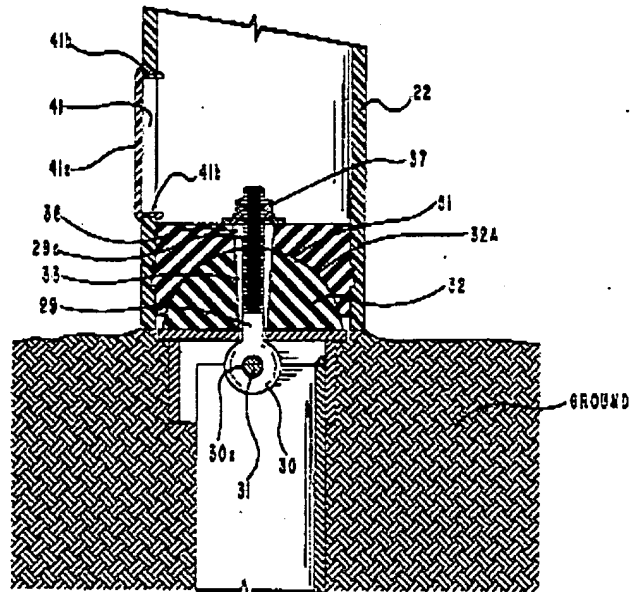
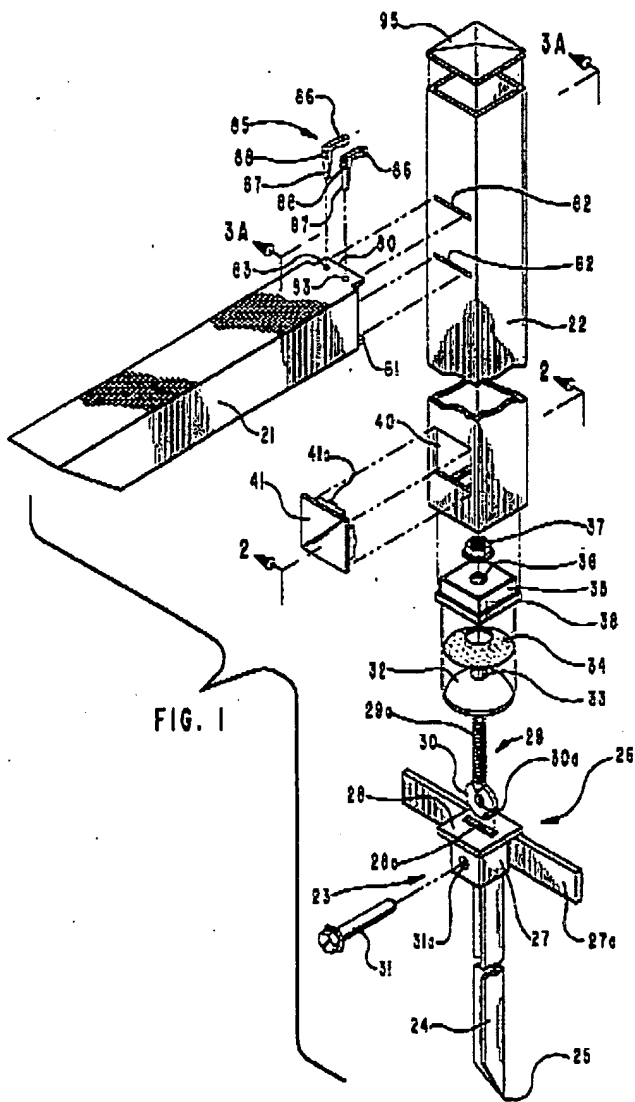


FIG. 7

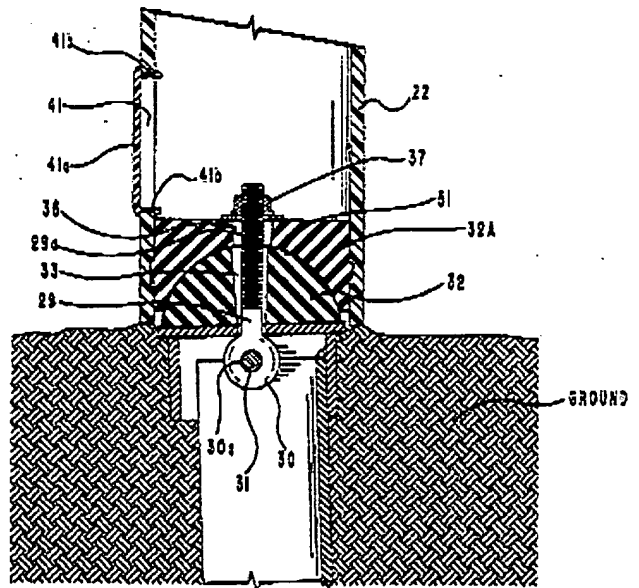


FIG. 7A

West '682 Figures 1, 7, and 7A

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over West. West discloses a mounting apparatus structurally as claimed including an attachment rod secured to a substructure, a semispherical joint for mounting a post base to the substructure with the rod, and a fastener for securing the post in position, but does not specifically disclose a "method" of mounting a post. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to mount a post as prescribed by Applicant's method because the normal use of the mounting apparatus would encompass the steps as set forth.

18. Claims 6, 14-16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over West in view of Manning (US Patent Number 3204898).

19. Regarding claims 6 and 20, West discloses a mounting apparatus as recited in claims 5 and 19 including an exterior surface/sidewall of the post mount capable of being used to engage an inside wall of a tubular post, but does not disclose the surface/sidewall or post as round or cylindrical. Manning (Figures 2) discloses an adjustable post mount using a round/cylindrical post and post mount. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was

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made to use a round/cylindrical post and post mount in West's apparatus as taught by Manning based on the needs and desires of a user for a particular post cross-section.

20. Regarding claim 14, West discloses a mounting apparatus for a post, comprising: a mounting surface (23, etc.) secured to a substructure (the ground); and a threaded bolt (29) secured to the substructure and protruding from the mounting surface in a direction defining a first axis; a substantially disc shaped lower bearing (32) positioned above the mounting surface, the disc shaped lower bearing comprising: a bottom surface, a smoothly curved top surface, and an aperture (33) extending through the center of the disk to admit the threaded bolt; a substantially cup shaped post base (35) positioned above the lower bearing, the post base comprising: an exterior side wall (side surface of 35) dimensioned to engage an inner sidewall of a tubular post (22), and an exterior bottom surface (the undersurface of 35, 51) comprising a curved surface adapted to slidingly engage the top surface of the lower bearing and having an elongate slot (36, elongate in that it extends vertically through the post base) extending therethrough to admit the threaded bolt; and a fastener (37) that engages the bolt to releasably secure the mount in position; wherein a mounted post may be angularly offset from the first axis in a desired direction by translating (West's design allows limited translation of the bolt in the slot) the bolt in the elongate aperture and rotating the post about the first axis. West does not disclose the side wall as cylindrical. Manning discloses an adjustable post mount using a cylindrical post and post mount.

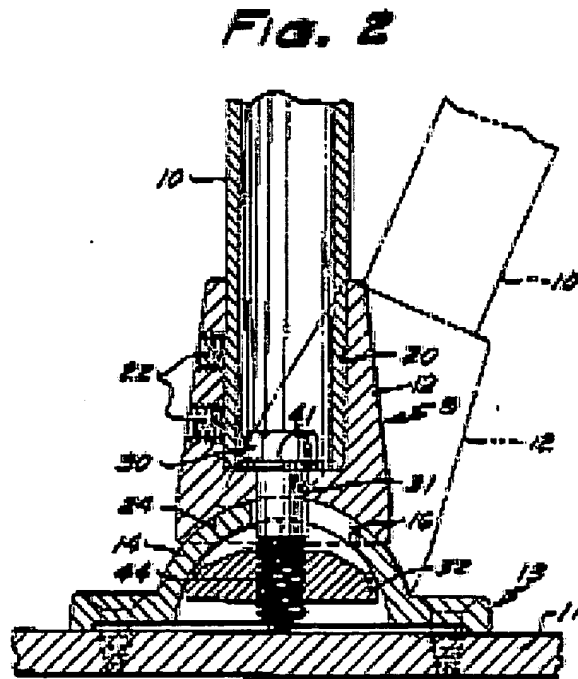
Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a cylindrical post and post mount in West's apparatus as

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taught by Manning based on the needs and desires of a user for a particular post cross-section.

21. Regarding claim 15, West further discloses the top surface of the lower bearing is convex and the bottom surface of the post base is concave and said surfaces comprise approximately equal radiuses of curvature.

22. Regarding claim 16, West further discloses the convex and concave surfaces are semispherical.

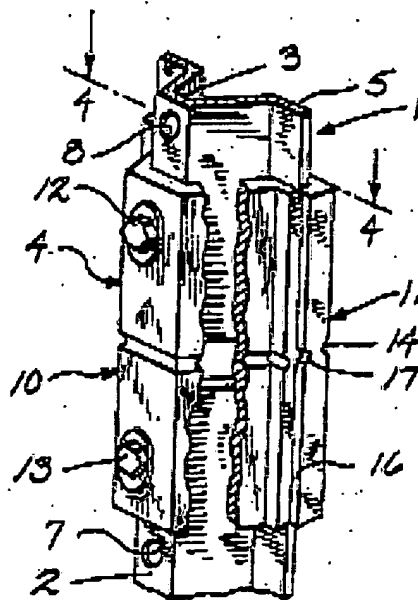


Manning '898 Figure 2

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23. Claims 11-13, 21, 22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over West in view of Katt (US Patent Number 3820906). West discloses a mounting apparatus as recited in claims 1, 19, and 24 as described above but does not disclose a post base designed to break away. Katt (Figure 2) discloses a post base (10, 11, etc.) comprised of grey iron (see for example column 2 lines 3-5) designed to break away in response to a predetermined or vehicle impact (see for example column 2 lines 6-10). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a break-away post base in West's design as taught by Katt because this would allow control over how and where the apparatus would be damaged in case of an impact.

24. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over West in view of Manning and further in view of Katt. West, modified by Manning as describe above, discloses a mounting apparatus as recited in claim 14 but does not disclose a post base designed to break away. Katt discloses a post base (10, 11, etc.) comprised of grey iron (see for example column 2 lines 3-5) designed to break away in response to a predetermined or vehicle impact (see for example column 2 lines 6-10). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a break-away post base in West's design, previously modified by Manning, as taught by Katt because this would allow control over how and where the apparatus would be damaged in case of an impact.



Katt '906 Figure 2

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Meyer (US Patent Number 6273390) and Speece et al. (US Patent Number 5927677) references are cited for disclosing various aspects of the invention of the instant application.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Gabler whose telephone number is (571) 272-6038. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PFG *ds*
8/31/2006


JAMES O. HANSEN
PRIMARY EXAMINER